

REMARKS

Claim Status

Claim 8 is canceled, without prejudice or disclaimer; and claims 1 and 5-7 are revised for sake of greater clarity, as supported, e.g., in paragraphs [0021] and [0023] of the published specification and in original claim 8.. No new matter is added, therefore.

Upon entry of this response, elected claims 1, 2, and 4-7 will be pending and subject to examination.

General Comments

Applicants thank Examiners Greene and Woodward for the courtesies extended during the December 15th phone interview. As reflected in the PTO's interview summary of December 19, 2011, Ex. Greene explained his position that the cited references of record disclose a "*de minimis*" amount of oil bodies and that the instant claims do not specify oil body amount or percentage.

With an eye towards advancing prosecution, Ex. Greene proposed three claim revisions: (1) delete the parentheses surrounding "oleosomes" and delete "discrete spheres of vegetable bodies;" (2) amend "washed oil bodies" to recite a method step, "washing oil bodies;" and (3) recite a specific percentage or amount of oleosomes in the composition.

Addressing the scope of an "emulsifier," as recited in a dependent claim, Ex. Greene explained his position that the art presents many emulsifiers and, from his perspective, that the skilled artisan would not have apprehended the metes and bounds of an "emulsifier" category encompassing them.

Finally, because applicants recently filed an RCE, the PTO agreed to postpone action until January 31, 2012, providing applicants time to prepare and file this Supplemental Amendment, addressing any of the issues discussed.

Rejections under 35 U.S.C. § 112 (Indefiniteness)

Claim 7 stands rejected for alleged indefiniteness surrounding “emulsifier.” Advisory Action, page 2. In particular, the PTO alleges that the art contains “many different emulsifiers with a range of properties and a system of hydrophile-lipophile balance (HLB system) was established to determine the hydrophilic versus lipophilic character of a given emulsifier.” *Id.* In this context the PTO alleges ambiguity, stating that “a given emulsifier could emulsify an oil and aqueous phase for a period of time before separating. And it would not be clear to a person having ordinary skill in the art how long a given chemical species would have to provide emulsification of the oil/aqueous phase before separation to be considered an emulsifier.” *Id.*

The Federal Circuit maintains, however, that “[a]bsolute clarity is not required to find a claim term definite. This Court has held that a claim term may be definite even when discerning the meaning is a ‘formidable [task] and the conclusion may be one over which reasonable persons will disagree.’ *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, __ F.3d __ (Fed. Cir. 2011), quoting *Source Search Tech., LLC v. Lendingtree, LLC*, 588 F.3d 1063, 1076 (Fed. Cir. 2009) (citing *Exxon Research & Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001)).”

The plain language of the rejected claim is clear that no emulsifier is added. Since the claim thus recites an absence of an emulsifier, it is irrelevant that the art is aware of many different types of emulsifiers with different emulsification properties,. Accordingly, the alleged breadth of the “emulsifier” genus should not bear the absence of an emulsifier.

Solely for advancing prosecution, nevertheless, claim 7 clarifies that the emulsion does not show any phase separation for at least thirty days at 45°C. See specification, e.g., published paragraph [0024]. Based on the specification’s disclosure and knowledge in the art, the skilled artisan therefore would understand the metes and bounds of claim 7.

For at least these reasons, therefore, claim 7 complies with Section 112, and the rejection should be withdrawn.

Rejections under 35 U.S.C. § 102

A. Lorant (U.S. Patent No. 6,465,402)

Claims 1-4 remain rejected as allegedly anticipated by Lorant, U.S. Patent No. 6,465,402. Advisory Action, page 2. The PTO maintains its position that Lorant discloses a cold pressed oil, which inherently (*i.e.*, necessarily) comprises vegetable oil bodies.

As was discussed during the December 15th interview, Lorant does not teach methodology for preparing a cosmetic or topical product comprising an aqueous emulsion of washed oleosomes, where the oleosomes are used in an amount from about 2 wt.% to about 15 wt.% based on the total weight of the product. The present claims require that the subject methodology involve a “washing” of oleosomes that removes “contaminating seed material,” which removal is essential to obtain a dispersion suitable for cosmetics. See specification, *e.g.*, at published paragraph [0021].

For these reasons, Lorant does not anticipate the present claims, warranting withdrawal of the rejection.

B. Marketman and Kleinig

Claims 1, 5, and 7 remain rejected as allegedly anticipated by Marketman, www.marketmanila.com (published January, 2005), as evidenced by Kleinig, *Planta* (1978). Advisory Action, page 2. Specifically, the PTO alleges that “Marketman discloses fresh coconut juice extracted from young coconuts in which the meal is still thin, opaque, soft and easily scrapped from the inside of the fruit (page 1, last paragraph) and Kleinig discloses that oleosomes are present in all plant tissues.” *Id.*

Even if it were the case, however, that Marketman and Kleinig disclose plant tissue with residual oleosomes, that fact would remain that neither reference or any reasonable combination of them implicates methodology for preparing a cosmetic or topical product comprising an aqueous emulsion of washed oleosomes, where the oleosomes are used in an amount from about 2 wt.% to about 15 wt.% based on the total weight of the product.

For these reasons, Marketman and Kleinig do not anticipate the present claims and the rejection should be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 6 and 8 stand rejected for alleged obviousness over Lorant (U.S. Patent No. 6,465,402,) in view of Kauranen, WO 2004/082642. Advisory Action, page 2. Invoking Lorant, as discussed above, the PTO cites Kauranen as allegedly disclosing “cold pressed” seed oils that would have contained vegetable oil oleosomes.

To whatever extent Laurant and Kauranen may disclose seed oils with residual oleosomes, it is beyond cavil that neither the references separately nor their combination could have suggested methodology for preparing a cosmetic or topical product comprised of an aqueous emulsion of washed oleosomes in an amount from about 2 wt.% to about 15 wt.%, based on the total weight of the product. Accordingly, no permissible permutation of Lorant and Kauranen could render the claim 6 obvious, within the meaning of Section 103, and the rejection therefore should be withdrawn.

CONCLUSION

Applicants submit the present claims are in allowable condition, and they request an early indication. Examiner Greene is invited to contact the undersigned, should he feel that any issue warrants further consideration.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of the relevant fee(s) from the deposit account.